



Federal Communications Commission  
Washington, D.C. 20554

December 19, 2005

**DA 05-3220**

**Released: December 19, 2005**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Telefutura Orlando, Inc.  
WOTF-TV  
1999 Avenue of the Stars  
Suite 3050  
Los Angeles, CA 90067

Re: Telefutura Orlando, Inc.  
WOTF-TV, Melbourne, FL  
Facility ID No. 5802  
File No. BRCT-20041001AVB  
NAL/Acct. No. 0641420016  
FRN: 0005877790

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each commercial broadcast station to place in its public inspection file Children's Television Programming Reports, records concerning compliance with the children's programming commercial limits, and TV issues/programs lists.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.<sup>1</sup> As set forth in Section 73.3526(e)(11)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Section 73.3526(e)(11)(iii) of the Rules also requires commercial television stations to file the reports with the Commission and to publicize the existence and location of the reports. In addition, pursuant to Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Further, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning compliance with the children's programming commercial limits, Children's Television Programming Reports, and TV issues/programs lists for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>2</sup>

On October 1, 2004, you filed a license renewal application (FCC Form 303-S) for station WOTF-TV, Melbourne, Florida (File No. BRCT-20041001AVB). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WOTF-TV failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to station WOTF-TV's renewal application, you indicate that during a review of the station's public inspection file, the station discovered that the certification of compliance with the children's programming commercial limits, the Children's Television Programming Report and the TV issues/programs list for the fourth quarter of 2001 were missing from the station's public file. In addition, you report that records concerning compliance with the children's programming commercial limits for the first quarter of 2002 and third quarter of 2003 were missing. You assert that most of these items are from the time shortly after the current owner assumed control of the station. You claim that station employees reviewed the materials in the public file left by the former owner and found a large number of unnecessary documents in the file. As a result, you state, station WOTF-TV and a Univision Communications Inc. employee reviewed these items, discarded unnecessary items, and organized the remaining items according to the Commission's public file rule. You indicate that it is believed that in this process, the public file documents reported in station WOTF-TV's renewal application may have been misplaced. You maintain that the

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<sup>1</sup> See 47 C.F.R. § 73.3526.

<sup>2</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

missing documents have now been restored and placed in the public file. You argue that this instance is a *de minimis* matter, particularly given the licensee's history of overall compliance.

Station WOTF-TV's failure to retain in its public inspection file the required documentation constitutes a willful and repeated violation of Sections 73.3526(e)(11)(i)-(iii). Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>4</sup>

*The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.<sup>5</sup> In this case, the licensee has corrected the violation. On the other hand, required documents for three quarters were missing from the public inspection file. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the violation in this case.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>6</sup> If, however, the licensee fails to meet that standard, the Commission may

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<sup>3</sup> 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

<sup>6</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of*

deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>7</sup>

The public inspection file rule serves the critical function of making available to the public important information related to station operations. On balance, however, we find that Telefutura Orlando, Inc.’s violation of Section 73.3526 does not constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WOTF-TV served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of Act, and Sections 0.283 and 1.80 of the Rules, Telefutura Orlando, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willful and repeated violations of Section 73.3526(e)(11)(i)-(iii) of the Rules.

IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release date of this Notice of Apparent Liability, Telefutura Orlando, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

IT IS FURTHER ORDERED that, the application (File No. BRCT-20041001AVB) of Telefutura Orlando, Inc. for renewal of license for station WOTF-TV, Melbourne, Florida, IS GRANTED.

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*Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

<sup>7</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>8</sup> *See* 47 C.F.R. § 1.1914.

Finally, IT IS ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to Robert V. Cahill, President and CEO, Telefutura Orlando, Inc. at the address listed above, and to its counsel, Lauren Lynch Flick, Esquire, Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037.

Sincerely,

Donna C. Gregg  
Chief, Media Bureau